

**February 13, 2001**

**UNDER SECRETARY FOR HEALTH'S INFORMATION LETTER**

**CASE REPORTING OF HUMAN IMMUNODEFICIENCY VIRUS (HIV) TO STATE  
AND LOCAL HEALTH AUTHORITIES BY VA FACILITIES AND PROVIDERS**

1. This information letter provides advisory opinions issued by the Department of Veterans Affairs (VA) Office of the General Counsel on reporting of individuals with Human Immunodeficiency Virus (HIV) disease by VA facilities and providers to their respective state or local health authorities.

**2. Background**

a. Following consultations with multiple and diverse constituencies (including representatives of public health, government, and community organizations), the Centers for Disease Control and Prevention (CDC) and the Council of State and Territorial Epidemiologists (CSTE) has recommended that all states and territories conduct case surveillance for HIV infection as an extension of current Acquired Immunodeficiency Syndrome (AIDS) surveillance activities (see subparagraph 5a). This effort was considered a necessary response to the impact of advances in antiretroviral therapy, the implementation of new HIV treatment guidelines, and the increased need for epidemiologic data regarding persons at all stages of HIV disease, with or without AIDS-defining illnesses.

b. CDC's revised surveillance case definition and associated recommendations became effective January 1, 2000. The expanded surveillance is to provide additional data about HIV-infected populations to enhance local, state, and federal efforts to prevent HIV transmission, improve allocation of resources for treatment services, and assist in evaluating the impact of public health interventions.

c. Through December 31, 1999, 33 states had laws or regulations requiring by name, confidential reporting of all persons with confirmed HIV infection, in addition to reporting of persons with AIDS (see subparagraph 5b).

d. Due to the changes in the reporting laws in many states requiring HIV reporting by name, clarification of the responsibilities of VA facilities and VA providers to conform with state HIV reporting laws and regulations is needed. Specifically, the issues concern whether or not VA facilities and VA providers need to comply with:

(1) state or local laws and regulations that would require reporting of VA patients with HIV infection.

(2) state or local health departments that require reporting of sexual contacts of the reported HIV infected person.

(3) specific requirements of state health care licensure laws applied to license holders to comply with state HIV reporting laws and regulations.

**3. HIV Reporting to State and Local Health Authorities**

a. VA General Counsel opinions hold that VA is under no legal obligation to comply with a state mandatory-reporting law to report its patients' HIV results to state or local health departments (see subparagraphs 5c, 5d, 5e, and 5f).

b. VA General Counsel opinion also holds that VA may report names of veterans with HIV infection or AIDS to state and local health authorities when requested in writing by an appropriate public health authority. In response to written requests from appropriate state or local health public health authorities, VA providers may report such results where VA determines that such reporting is consistent with Federal law and in VA's interest. Before VA facilities disclose such information through their respective medical information release office, such as Medical Administration Service, specific written authority from the local or state health authorities must exist to protect against unauthorized disclosure of information, diagnoses, medical treatment and names and addresses of the veterans and their dependents (see subparagraphs 5f, 5g, 5h, and 5i).

c. The Under Secretary for Health and the VHA AIDS Service encourages VA HIV providers to:

(1) collaborate and cooperate with their colleagues in state and local health departments in HIV testing and reporting (see subparagraph 5j).

(2) Collaborate with the state and local health authorities when reasonable written requests are received from appropriate state or local public health officials; and those requests do not violate VA HIV reporting requirements or create excess administrative burden; and receipt of the request has been appropriately acknowledged by the facility Director (see subparagraph 5g).

(3) Provide a copy of any agreement between state or local health authorities and VA concerning case reporting of veterans infected with HIV to AIDS Service (132), 810 Vermont Avenue, NW, Washington, DC 20420.

d. As part of the VA HIV testing authority provided in Public Law 100-322, VA providers may disclose positive HIV test results to a spouse or sexual partner under limited circumstances (see subparagraph 5g). A VA physician or a professional counselor may disclose information or records indicating that a patient is infected with HIV to a spouse or sexual partner only if, after making reasonable efforts to counsel and encourage the patient to provide the information to the spouse or sexual partner, the VA physician or professional counselor reasonably believes that the patient will not provide the information to the spouse or sexual partner; and that disclosure is necessary to protect the health of the spouse or sexual partner (see subparagraphs 5f, 5g, and 5h).

e. The Office of General Counsel advisory opinions hold that the Supremacy Clause of the United States Constitution would bar a state licensing entity from enforcing a state reporting requirement against a VA provider where Federal law barred disclosure of the information (see subparagraph 5k). If a VA practitioner has been summoned to appear before a state licensing board because an action was initiated against the VA provider for following Department policies that conflict with state law, VA has the authority to provide and pay for representation when the interest of the United States is at stake (see subparagraph 5l). Contact the local Regional Counsel's Office or the VA AIDS Service if there are questions on this issue.

4. **Conclusion** VA's Office of General Counsel Advisory Opinions hold that VA providers are not under any legal obligation to comply with a state mandatory HIV reporting law. However, in the spirit of cooperation with state and local health authorities, VA providers are allowed and encouraged to comply with those official requests provided appropriate authorities make written requests, and VA regulations concerning release of medical information are followed.

5. **References**

a. CDC. Guidelines for national Human Immunodeficiency Virus case surveillance, including monitoring for Human Immunodeficiency Virus infection and Acquired Immunodeficiency Syndrome. Morbidity and Mortality Weekly Report. 48 (No. RR-13): 1999.

b. CDC. HIV/AIDS Surveillance Report. Volume 11, Number 1, December 1999.

c. VA Office of General Counsel Advisory Opinion - VA is under no legal obligation under a state mandatory law. September 7, 2000.

d. VA Office of General Counsel Advisory Opinion 9-90 - VA is not compelled to follow state reporting requirements on parent or elder abuse. February 16, 1990.

e. VA Office of General Counsel Advisory Opinion 58-94 - VA is not required to follow state reporting requirements on CD4+ test results. December 12, 1994.

f. VA Office of General Counsel Advisory Opinion 3-95 - VA is not required to release HIV information under Michigan law. June 12, 1995.

g. VHA Manual M-1, Part I, Chapter 9 on Release of Medical Information.

h. VA Office of General Counsel Advisory Opinion - Reporting of HIV Cases, Sexual partners, and Needle Sharing Partners. July 10, 2000.

i. VHA Circular 10-88-118 and Supplement No. 1, "Case Reporting of Acquired Immune Deficiency Syndrome (AIDS)."

j. VHA Manual M-2, Part IV, Chapter 6 on Infectious Diseases.

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k. VA Office of General Counsel Advisory Opinion 47-92 - The Supremacy Clause bars Minnesota from enforcing the reporting statute against VA or its employees. November 19, 1992.

l. Under Secretary of Health's Information Letter 10-97-022. Representation for VA Practitioners before State Licensing Boards. June 24, 1997.

**6. Contact** Questions may be referred to Lawrence Deyton, MSPH, MD, Director, AIDS Service at 202-273-8567.

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